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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention

Fifth periodic reports of States parties due in 2012

Hong Kong, China* **

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Article 1: Defining "torture"

1.1 The position is as explained in paragraphs 1 to 6 of the initial report, where we discussed the definition of "torture" in section 3 of the Crimes (Torture) Ordinance (Cap. 427 of the Laws of Hong Kong)[1].

1.2 In paragraph 5 of the concluding observations of 2009 (the previous concluding observations), the Committee recommended that "the HKSAR [China, Hong Kong Special Administrative Region] should consider adopting a more inclusive definition of the term "public official" in the definition of torture as to clearly include all acts inflicted by or at the instigation of or with the consent or acquiescence of all public officials or other persons acting in an official capacity".

1.3 The position is as explained in paragraph 60 of the previous report, where we advised the Committee that, section 2(1) of the Crimes (Torture) Ordinance defines "public official" as including "any person holding in Hong Kong an office described in the Schedule". The Schedule lists the following:

"1. An office in the Hong Kong Police Force (the Police).

2. An office in the Customs and Excise Department (Customs).

3. An office in the Correctional Services Department (CSD).

4. An office in the Independent Commission Against Corruption (ICAC).

5. An office in the Immigration Department (ImmD)."

1.4 As elaborated in paragraph 61 of the previous report, the aim of the Crimes (Torture) Ordinance is to cover officials normally involved in the custody or treatment of individuals under any form of arrest, detention or imprisonment. The use of the word "includes" in the definition of "public official" in section 2(1) makes it clear that a person not holding an office described in the Schedule may nevertheless be a "public official" (or a "person acting in an official capacity") for the purposes of the offence of torture.

1.5 Paragraph 5 of the previous concluding observations also recommended that "the HKSAR ensure that the definition comprises all the elements contained in article 1, including discrimination of any kind". In paragraph 6 of the previous concluding observations, the Committee recommended that the HKSAR should consider abolishing the defence contained in section 3(4) of the Crimes (Torture) Ordinance. It proposed that this could be done, for instance, by incorporating Article 1 of the Convention into its Basic Law.

1.6 The Basic Law is the constitutional document of the HKSAR. It is more appropriate to create the offence of torture in a piece of ordinary legislation. The conduct amounting to the offence of torture under section 3(1) of the Crimes (Torture) Ordinance is wide in scope and is not limited by the purpose of the act committed by the perpetrator. Section 3(1) makes it an offence for a public official or a person acting in an official capacity to inflict severe pain or suffering on another person irrespective of its purpose and irrespective of whether the pain or suffering is inflicted for a reason based on discrimination. It would suffice for a person to have inflicted severe pain or suffering on another in the performance or purported performance of his official duties. It is therefore necessary to provide for a defence in section 3(4) by providing that the accused shall have a defence if he can prove that he had lawful authority, justification or excuse for the conduct

[1] Cap. 427 gives effect in domestic law to the relevant provisions of the Convention.

in respect of which he is charged. The phrase "lawful authority, justification or excuse" is defined in section 3(5) to mean:

(a) In relation to pain or suffering inflicted in Hong Kong, lawful authority, justification or excuse under the law of Hong Kong;

(b) In relation to pain or suffering inflicted outside Hong Kong:

(i) If it was inflicted by a public official acting under the law of Hong Kong or by a person acting in an official capacity under that law, lawful authority, justification or excuse under that law;

(ii) In any other case an authority, justification or excuse which is lawful under the law of the place where it is inflicted.

1.7 Our position remains that the provisions of section 3 of the Crimes (Torture) Ordinance are consistent with article 1.1. The second sentence of article 1.1 provides that the term "torture" "does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions". The defence of lawful authority is intended to cover matters such as the use of reasonable force to restrain a violent prisoner or to treat a patient. It is not intended to cover – nor would the courts be asked to interpret them as authorising – conduct intrinsically equivalent to torture as defined in article 1.1.

Article 2: Legislative, administrative, judicial or other measures to prevent acts of torture

2.1 The situation remains essentially as explained in paragraphs 7 to 18 of the initial report. Since then, there have been no more reports of torture as defined in the Crimes (Torture) Ordinance.

Article 3: Torture as a ground for refusal to expel, return or extradite

3.1 In paragraphs 65 and 66 of the previous report, we informed the Committee that we had, having regard to the high standards of fairness laid down by our Court of Final Appeal in the case of *Secretary for Security vs Sakthevel Prabakar*, put in place administrative procedures for assessing torture claims made under article 3.1. The position remains essentially the same as explained in paragraphs 67 and 68 of the previous report in regard of Hong Kong's obligation under the Convention to persons subject to removal and deportation, and in paragraphs 69 and 70 in regard to fugitive offenders requested for surrender[2].

3.2 In paragraph 7 of the previous concluding observations, the Committee recommended, inter alia, that HKSAR should incorporate the provisions contained in Article 3 of the Convention under our domestic law; adopt a legal regime on asylum establishing a comprehensive and effective procedure to examine thoroughly, when determining the applicability of our obligations under Article 3 of the Convention, the merits of each individual case; as well as ensure that adequate mechanisms for the review of the decision are in place for each person subject to removal, expulsion or surrender.

[2] As at October 2012, we had signed a total of 18 bilateral agreements on the surrender of fugitive offenders.

Enhanced screening mechanism for torture claims

3.3 In December 2009, following the decision of the Court of First Instance in the case of *FB vs Director of Immigration and Secretary for Security*, we enhanced the administrative screening procedures to ensure that the required high standards of fairness would be met. Under the enhanced procedures, torture claimants may receive publicly-funded legal assistance by duty lawyers throughout the screening process. Claimants aggrieved by the Immigration Department's (ImmD) decision on their torture claims may lodge a petition, which would be considered by adjudicators (all of whom are former judges or magistrates).

3.4 Claimants have every reasonable opportunity to establish their claims. They will complete a torture claim form (with the assistance of duty lawyers and interpreters as appropriate) to provide grounds and evidence to substantiate their claims. Upon receipt of the forms, the ImmD will arrange for screening interviews with the claimants to clarify or supplement the information provided in the claim form.

3.5 If there are substantial grounds for believing that the claimant would be in danger of being subjected to torture if he or she is expelled, returned or surrendered from Hong Kong to a foreign country, the ImmD must accept the claim as substantiated. In the event that the claim is not substantiated, the ImmD will notify the claimant in writing of the decision with detailed reasons provided, as well as his or her right to lodge a petition against the decision.

3.6 As mentioned in paragraph 3.3, claimants may receive publicly-funded legal assistance during the screening process, including completion of the torture claim form, attendance at the screening interview, as well as lodging of a petition and attendance at an oral hearing for the petition (where applicable). Such assistance is being provided by our Duty Lawyer Service, under which some 260 barristers and solicitors have registered to provide assistance to torture claimants.

3.7 As at 30 June 2012, 1,983 claims made under Article 3 of Convention were determined under the enhanced screening mechanism. Around 5,600 outstanding torture claims are pending screening in Hong Kong.

3.8 We also introduced the Immigration (Amendment) Bill 2011 into the Legislative Council (LegCo) in July 2011. The Bill aimed to underpin the enhanced screening mechanism by adding new statutory provisions to the Immigration Ordinance (Cap. 115). Its object is to provide for a statutory process for making claims under Article 3 of the Convention and determining such claims, including how a torture claim is made and the effect thereof (i.e. non-refoulement protection), the requirements for the ImmD to arrange screening interview with claimants, to take into account all relevant considerations in determining a claim, and to inform the claimant of the decision with reasons for the decision by written notice, etc. The Bill also stipulates that a claimant who is aggrieved by the ImmD's decision may lodge an appeal, which will be handled by a statutory Torture Claims Appeal Board, and provides for other related matters. Under the Bill, a person whose surrender is requested in surrender proceedings may also claim non-refoulement protection under Article 3 of the Convention against the surrender of that person from Hong Kong to a torture risk State. The Bill was enacted into law in July 2012 (Ordinance No. 23 of 2012). The statutory framework will come into operation on 3 December 2012. Under the statutory scheme, a claimant will not be removed to his or her home country until his or her claim is finally determined and found not substantiated. Hence we do not see a need for the establishment of a post-removal monitoring mechanism.

Convention relating to the Status of Refugees and its 1967 Protocol

3.9 The Committee also recommend in paragraph 7 of the previous concluding observations that HKSAR should consider the extension of the 1951 Refugee Convention and its 1967 Protocol to Hong Kong. In this regard, it has all along been our established policy not to extend the Refugee Convention to Hong Kong. Given our developed economy and liberal visa regime, doing so will subject our immigration regime to abuses and thus undermining public interest, especially the interest of the local labour force.

3.10 That notwithstanding, asylum requests in Hong Kong are handled by the Hong Kong Sub-office of the Office of the United Nations High Commissioner for Refugees (UNHCR). The Director of Immigration will also consider whether or not to exercise his discretion on compassionate grounds to withhold the removal of an asylum seeker pending determination of his refugee status by the UNHCR (or a mandated refugee pending resettlement arrangement) on a case by case basis. We understand that as at 30 June 2012, there are some 500 asylum claims pending determination by the Hong Kong Sub-office of the UNHCR, and around 150 mandated refugees pending resettlement.

3.11 The HKSAR Government has all along been supporting the operation of the UNHCR's Hong Kong Sub-office through provision of office accommodation at nominal rent. Asylum seekers, torture claimants and mandated refugees in need may also receive humanitarian assistance through non-governmental organisations (NGOs) commissioned by our Social Welfare Department (SWD).

Article 4: Making acts of torture offences under the criminal law

4.1 The position is essentially as explained in paragraphs 38 and 39 of the initial report, which explained that torture is prohibited under the Crimes (Torture) Ordinance (Cap. 427) and a person who aids or abets the commission of an offence by another person is guilty of the like offence under section 89 of the Criminal Procedure Ordinance (Cap. 221). An attempt to commit torture is also an offence under section 159G of the Crimes Ordinance (Cap. 200).

Article 5: Establishment of jurisdiction

5.1 As explained in paragraph 40 of the initial report, section 3 of the Crimes (Torture) Ordinance provides that the offence of torture is committed, whether the conduct constituting the offence is performed in Hong Kong or elsewhere. The nationality of the perpetrator or the victim is immaterial. The courts of the HKSAR have full jurisdiction over such offences in conformity with Article 5 of the Convention.

Article 6: Powers of detention

6.1 The position of the Correctional Services Department (CSD) and the Police remain essentially as explained in paragraphs 41, 42 and 44 of the initial report.

6.2 The "Policy on Exercise of Detention Powers Conferred by Section 32 of the Immigration Ordinance (Cap. 115)" has been implemented and publicised since October 2008. The ImmD has been issuing the "Guidance to an arrested person on arrest and detention" since January 2010 to help an arrested person understand the legal authority for his arrest and detention.

6.3 With regard to the Law Reform Commission Report on Arrest, the Government has implemented those recommendations that are capable of being effected through

administrative means. As regards the remaining recommendations, the Government has set up an interdepartmental working group to further study the implementation details and conduct research on recent developments concerning overseas law enforcement agencies.

Article 7: Prosecution of offenders who are not to be extradited

7.1 The position is as explained in paragraph 45 of the initial report.

Article 8: Extradition arrangements

8.1 The position remains essentially as explained in paragraphs 46 to 48 of the initial report and paragraphs 79 and 80 of the second report. The Government has negotiated 18 bilateral agreements on the surrender of fugitive offenders[3] under authorisations from the Central People's Government.

8.2 The Fugitive Offenders (Torture) Order remains in full force. The Order applies the procedures in the Fugitive Offenders Ordinance (Cap. 503) to requests for surrender of fugitive offenders by jurisdictions to which the Convention applies for offences created by the Convention. This enables the Government to surrender such offenders to all such jurisdictions. Surrender may be granted even if the jurisdiction requesting it is exercising extra-territorial jurisdiction in respect of the offence[4]. At the time of drafting this report, there had been no such requests.

Article 9: Mutual assistance in relation to crimes of torture

9.1 The position remains essentially as explained in paragraphs 49 to 51 of the initial report and paragraph 82 of the second report. The Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) – enacted in 1997 – empowers the HKSAR Government to provide under authorisations from the Central People's Government certain forms of assistance provided an agreement is in place or reciprocity is guaranteed. These are:

- The taking of evidence or the production of a thing in court;
- The search or seizure of a thing or the production of documents pursuant to court orders;
- The service of documents;
- The transfer of prisoners to give assistance; and
- The seizure and confiscation of the proceeds of crime.

9.2 As at September 2012, we had signed 27 bilateral agreements on mutual legal assistance in criminal matters[5].

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[3] Including the Netherlands, Canada, Australia, Malaysia, the USA, Singapore, New Zealand, India, the Philippines, Indonesia, the UK, Sri Lanka, Portugal, Finland, Germany, Republic of Korea, Ireland and South Africa.

[4] Thus, for example, if a state were to seek the surrender of a fugitive offender, the HKSAR Government would do so, provided that the state in question had jurisdiction over that person by virtue of its laws or of any treaties it had entered into. Surrender would proceed even if the person's offence had been committed outside the requesting state.

[5] Including Australia, the USA, France, the UK, New Zealand, Italy, Republic of Korea, Switzerland, Canada, the Philippines, Portugal, Ireland, the Netherlands, Ukraine, Singapore, Belgium, Denmark,

Article 10: Education and information on the prohibition of torture

General

10.1 The position remains broadly as explained in paragraphs 52 to 58 of the initial report.

Police

10.2 The position is essentially the same as mentioned in paragraph 52 of the initial report.

Correctional Services Department

10.3 The position is essentially the same as mentioned in paragraph 86 of the previous report. CSD will continue to provide relevant induction and regular in-service training programmes to staff with emphasis on the prevention of torture and degrading treatment or punishment of persons in custody.

Immigration Department

10.4 The position is essentially the same as mentioned in paragraph 87 of the previous report.

Independent Commission Against Corruption

10.5 The position is essentially as explained in paragraph 56 of the initial report.

Health-care professionals

10.6 Health-care professionals are trained to closely monitor the physical and mental well-being of patients in the course of routine patient care and are well equipped with the knowledge to recognise clinical features and physical signs that are suggestive of occurrence of abuse, including the sequelae of torture. For doctors, the Hong Kong College of Paediatricians conducts regular and mandatory courses on child protection for all Paediatricians trainees and the subject of elderly abuse is part of college training for all Geriatrics trainees.

10.7 On training of nurses, topics such as child and elderly abuse are included in the curricula of basic nursing education. In the Hospital Authority (HA), the provider of public hospital services in Hong Kong, continuing education and on-job training are regularly organised for nurses who may encounter such incidents in their daily practice. These include orientation programmes for new recruits, advanced specialty training in gerontological nursing, training in child health and emergency nursing. Also, the HA has drawn up clinical guidelines on managing intimate partner violence and domestic violence.

10.8 For allied health professionals, the HKSAR Government has implemented measures to ensure that medical social workers and clinical psychologists are equipped with adequate training and knowledge in this regard. To enhance the knowledge of medical social workers in handling domestic violence, elderly abuse, child abuse and sexual violence cases, the SWD has been providing regular trainings for medical social workers stationing in the HA. Relevant skills including the provision of counselling to victims, perpetrators and their family members are particularly strengthened.

Poland, Israel, Germany, Malaysia, Finland, Indonesia, Japan, Sri Lanka, South Africa and India.

10.9 As to clinical psychologists, training in trauma psychology covers assessment for proper recognition and treatment of psychosocial and mental health problems related to abuse and trauma. This has been included as part of the curriculum of all recognised clinical psychology programmes in Hong Kong. Furthermore, continuing education and on-job training in psychological assessment and evidence-based treatment for trauma-related mental health problems have been organised for clinical psychologists working in the HA.

10.10 In paragraph 9 of the previous concluding observations, the Committee recommended that the HKSAR should ensure that health care professionals are equipped with the necessary training and information to recognise and detect signs and features that may suggest the occurrence of torture. Specific training programmes on the "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Istanbul Protocol) has been provided for officers of the ImmD and healthcare professionals in the public healthcare system (including doctors and other health professionals). The training helped to familiarise the personnel involved in handling torture claims on the requirements under the Istanbul Protocol, and equipped them with capability to recognise and detect signs and features of torture claimants that may suggest the occurrence of torture.

Article 11: Review of interrogation rules, instructions, methods and practices for custody and treatment of persons arrested or detained

11.1 We take the opportunity to inform the Committee of the developments in respect of the rules and practices of the disciplined services and mental hospitals since the submission of the previous report.

Collection of intimate and non-intimate samples from suspects

11.2 As mentioned in paragraph 91 of the previous report, the Police, the Customs and the ICAC have the power to collect intimate and non-intimate samples from suspects for forensic analysis since 2001. The ICAC has established guidelines and procedures for the taking of non-intimate samples from suspects under ICAC investigation and their subsequent handling and disposal. The Customs has also established guidelines and procedures for handling of intimate and non-intimate samples. These guidelines provide safeguards against possible abuses of power by the law enforcement officers.

Correctional Services Department

Search procedures of the CSD

11.3 In accordance with Rules 9 and 10 of the Prison Rules (Cap. 234, sub. leg. A), CSD officers are authorised to conduct searches on prisoners upon the latter's admission into CSD's institutions and at such times subsequently as considered necessary by the officer-in-charge. As an established practice, all prisoners have to be thoroughly searched upon their admission, change of locations within the institution, return from outside locations and at such times when they could possibly come into possession of drugs and other contraband from their contact with outsiders. This is to ensure the safety of prisoners and other persons, and to maintain prison security, order and discipline.

11.4 The principles of proportionality and necessity are enshrined in Rule 9(2) of the Prison Rules, which stipulates that the searching of a prisoner shall be conducted with due regard to decency and self-respect, and in as seemly a manner as is consistent with the necessity of discovering any concealed articles. Under the established practice, body cavity

searches are conducted by trained medical staff (i.e. a medical officer or an officer who is a qualified nurse) of the same sex. The CSD has internal guidelines to assist officers in carrying out searches in an appropriate and consistent manner. The CSD conducts supervisory assessments or inspections regularly to ensure that operational practices are in conformity with the statutory provisions and internal guidelines.

11.5 To reduce manual body cavity searches, the CSD will procure one set of low radiation X-ray body scanner to assist in the search for contrabands concealed in the body of persons in custody, with a view to preventing contrabands (in particular drugs) from being smuggled into correctional institutions. The CSD plans to operate X-ray body scanner at Lai Chi Kok Reception Centre for checking all the inmates newly admitted to the Reception Centre. If the scanner is effective, the CSD will consider procuring more for other institutions.

Legislative amendments to the Criminal Procedure Ordinance (Cap. 221)

11.6 As explained in paragraphs 94 and 95 of the previous report, the Criminal Procedure (Amendment) Ordinance 2004 provides that judges of the Court of First Instance may determine the minimum terms of prisoners who are serving indeterminate sentences and are detained at Executive discretion. Subsequent to the amendment, all 12 prisoners detained at Executive discretion for having committed murder under the age of 18 received determinate sentences from the Court of First Instance. All of them have since served their determinate sentences with the last prisoner discharged in December 2008.

Prevention of suicides

11.7 As at 30 September 2012, the last suicide case happened in August 2010. The CSD has been making every effort to prevent inmate suicide, which includes regular review of the mechanism and strategies for the detection and prevention of suicide in custody from time to time. The most recent review was conducted in 2011. The CSD has since implemented improvement measures including enhanced training to increase staff sensitivity to and awareness of suicidal signs and symptoms, enhanced mechanism for monitoring and reporting of at-risk cases, refinement of the screening protocol for early screening of inmates for suicidal tendencies, and modifications to the fittings in prison accommodation to make suicide attempts more difficult. The CSD will continue to review the effectiveness of the measures on a regular basis. In 2011, there were 82 self-harm cases involving persons in custody, who were successfully stopped from further self-injury by CSD officers.

Police

11.8 The situation remains essentially as explained in paragraph 60 of the initial report.

11.9 In paragraph 10 of the previous concluding observations, the Committee raised concern on certain aspects of the Police's procedure in conducting custody search of detainees.

11.10 The Police conducted a review in respect of the custody searches of detainees in early 2008 and introduced substantial enhancement to their guidelines and procedures for handling custody searches of detainees in July 2008. The new arrangements seek to provide better safeguards in respect of the requirements to respect the rights of the detainees and to prevent unnecessary searches. The new guidelines clearly stipulate, among other things, that a search involving the removal of underwear should not be conducted routinely but only in circumstances with strong justifications. The guidelines also provide that when conducting searches involving the removal of clothing, police officers should have due regard to the privacy and dignity of the detained person concerned. For instance, such a

search will only be conducted in an area offering privacy not in view of persons other than those officers required to carry out, witness or supervise the custody search. Police officers are required to accurately record all searches conducted on detainees, including the scope of and the reason(s) for the search, in the Police's Communal Information System (CIS). Supervisory officers will review records in the CIS to ensure that officers concerned comply with the search procedures and to take actions on any non-compliance of searches guidelines. Statistics of all searches involving full removal of underwear are provided for the Panel on Security of the LegCo for information on a quarterly basis.

11.11 To better discharge the Commissioner of Police's duty of care owed to detained persons, the following measures, among others, have been introduced over the past few years:

- The display of a notice to inform detainees of "Conditions and Treatment in Police Detention Facilities" in the corridor outside every cell room;
- The provision of welfare items to persons detained in police custody, e.g. facemasks, boxed tissues, packed wet tissues, sanitary napkins; every refusal to provide such by the Police has to be properly documented in the CIS;
- The introduction of a new directive on the searching of persons with special needs including, but not limited to, persons with physical disabilities, persons under the age of 16, persons with physical communication difficulties. The presence of an appropriate adult, of 18 years of age or above and of the same gender as the person to be searched, is mandatory for detained persons under the age of 16 and detained persons who are or suspected to be mentally incapacitated. Detained persons with special needs of other categories may request for the presence of an appropriate adult as necessary. The role of an appropriate adult include, but not limited to, assisting the Police in dealing with and looking after the rights, welfare and special needs of such a person and assisting the Police in communicating and explaining to such a person the reason(s) for detention and procedural matters; and
- The introduction of a Language Identifier for persons who speak a language other than Chinese or English to identify their own language to facilitate communication and for subsequent arrangements of an interpreter, if necessary.

Immigration Department

11.12 The situation remains largely as explained in paragraph 100 of the previous report.

11.13 To provide an immigration detention facility for immigration offenders (18 years old or above) awaiting repatriation, removal or deportation in accordance with the Immigration Ordinance, the Castle Peak Bay Immigration Centre (CIC) commenced operation in 2005. The detainees at the CIC are treated in accordance with the Immigration (Treatment of Detainees) Order (Cap. 115, sub. leg. E) which contains provisions about notification to relatives, communication with legal advisers, keeping of detention records, medical examination, comfort of detainees, complaints, and visits by Justices of the Peace.

11.14 The ImmD conducts on-going reviews and updates, if required, internal guidelines for search. The Department conducted a comprehensive review and issued standard guidelines for search of persons, premises, vehicles and vessels in 2008. Officers who carry out searches must comply with the guidelines and ensure that all searches are lawfully and reasonably conducted. Before the search, officers will serve a "Search Notice" to the subject which stipulates the purpose of search and factors to be considered when deciding the appropriate scope of search. Besides, persons being searched will be informed of the rights to retain essential clothing or article, such as hearing-aid, spectacles and religious head-dress, etc. Officers who fail to comply with the relevant guidelines are liable to

disciplinary actions, and if crimes are involved, prosecutions would be taken where appropriate.

11.15 From early 2009, individual immigration control points have implemented the "Detention Policy and Guidelines in Handling Person Detained under Section 32 (of the Immigration Ordinance)". A refused landing passenger will be served a "Notice on Detention Policy" and a "Notice of Detention". All detention cases will be reviewed on a monthly basis by the Sectional Commanders of the control points. If detention has to be maintained, the detainee will be served a fresh "Notice of Review of Detention".

Customs and Excise Department

11.16 The position is as explained in paragraph 69 of the initial report. Moreover, all Customs offices are now equipped with video recording facilities.

Persons detained in mental hospitals

11.17 The position regarding the protection of the rights of persons detained in mental hospitals remains essentially as explained in paragraphs 73 to 80 of the initial report. A development of note has been, in 2001, the Judiciary and the HA formulated administrative arrangements to ensure that mental patients, if they so request, could have access to a judge or magistrate before such judge or magistrate determines whether or not to make an order of compulsory detention in a mental hospital.

11.18 Conditions under which electro-convulsive therapy (ECT) will be administered on patients remain the same as explained in paragraphs 81 to 83 of the initial report. The pattern of application of ECT in the past five years was as follows:

	2007-08	*2008-09*	*2009-10*	*2010-11*	*2011-12*
Number of Patients receiving ECT	175	153	110	137	82
Number of treatments	1,387	1,266	828	945	696
Average number of treatments per patient	7.9	8.3	7.5	6.9	8.5

Article 12: Prompt and impartial investigation of torture

12.1 As explained under Article 2, there have been no cases, or even allegations, of torture in the period under report. Any claim or suspicion of torture having occurred in Hong Kong would be subject to immediate investigation through the complaints mechanisms described in paragraphs 13.1 to 13.14 below in relation to Article 13[6]. Assertions of torture committed in other jurisdictions would be handled as explained above in relation to Articles 3, 8, and 9.

Article 13: Right of complaint

Correctional Services Department

13.1 The complaint mechanism in place remains essentially the same as explained in paragraphs 110 to 116 of the previous report. CSD's Complaints Investigation Unit handles and investigates all complaints within its purview. The results of these investigations are

[6] Paragraphs 85 to 101 of the initial report described matters relating to complaints mechanisms under the section on Article 12. These matters also fall within the scope of Article 13.

examined by the CSD Complaints Committee. In 2011, the CSD's Complaints Investigation Unit received a total of 95 complaints from inmates and members of the public. During the year, the CSD's Complaints Committee examined 78 complaints, of which one was substantiated.

Police

13.2 Integrity and respect for the rights of members of the public are among the core values of the Police. The Police will continue their efforts in promoting such core values within the Force.

Sex workers

13.3 In paragraph 11 of the previous concluding observations, the Committee expressed concerns on the allegations of routine police abuses of persons during operations in the context of prostitution-related offences.

13.4 All police officers participating in undercover operations are required to fully comply with internal guidelines designed for this purpose, and the conduct of these undercover operations is subject to supervision. Any person who feels aggrieved by police actions may lodge a complaint. All complaints against police officers will be thoroughly investigated. If any allegation of abuse of authority is substantiated, the police officer concerned will be subject to disciplinary action. Criminal prosecution may be taken as required.

Complaints Against Police Office and Independent Police Complaints Council

13.5 In paragraph 12 of the previous concluding observations, the Committee expressed that HKSAR should continue to take steps to establish a fully independent mechanism mandated to receive and investigate complaints on police misconduct.

13.6 Under the existing two-tier police complaints handling system, the Complaints Against Police Office (CAPO) is responsible for handling and investigating complaints lodged by members of the public against members of the Police. The CAPO operates independently from other Police formations to ensure its impartiality in handling complaints. The Independent Police Complaints Council (IPCC) is an independent statutory body specifically appointed to monitor and review the CAPO's handling and investigation of complaints. Members of the IPCC appointed by the Chief Executive are drawn from a wide spectrum of the community.

13.7 The Independent Police Complaints Council Ordinance (Cap. 604) (IPCC Ordinance) provides the above police complaints system with a statutory basis. The Ordinance came into force on 1 June 2009 and turned the former IPCC into a statutory body. It clearly sets out the statutory IPCC's role, functions and powers in the police complaints handling system, as well as the obligations of the Police to comply with the requirements made by the IPCC under the Ordinance. There are effective checks and balances to ensure that the complaints lodged with the CAPO are handled thoroughly, fairly and impartially.

13.8 In gist, the CAPO is obliged under the Ordinance to submit a detailed investigation report on each reportable complaint to the IPCC for rigorous examination and is required to address queries and suggestions from the IPCC on the report. Where IPCC members have doubts about the investigation of a particular complaint, they may invite the complainants, complainees and any other person who is or may be able to provide information or other assistance to interviews. If the IPCC is not satisfied with the result of a CAPO investigation, it may ask the CAPO to clarify any doubts or reinvestigate the complaint. It may also bring the case to the personal attention of the Chief Executive. The IPCC also

monitors the CAPO's investigations into reportable complaints through the IPCC Observers Scheme, under which IPCC members and a wide pool of Observers undertake, on a scheduled or surprise basis, observations of the interviews and collection of evidence conducted by the Police during investigation of complaints to ensure that these processes are conducted in a fair and impartial manner. The minimum number of observations to be conducted by each Observer every year was increased from 2 to 4 in 2008. An addition of 20 Observers were appointed to the IPCC Observers Scheme in November 2010, increasing the total number of Observers to 110. Duty rosters are issued to remind Observers on duty to attend observations. Observers not on roster may also attend for observations. As a token of appreciation, a non-taxable honorarium is provided to Observers per attendance of observation. CAPO endeavour to inform IPCC of impending interviews or scene visits as soon as practicable. In 2010 and 2011, over 90% of such notifications were given at least 48 hours in advance. The number of observations conducted by IPCC from 2008 to 2011 is detailed in the following table.

Year	*Number of notification received by IPCC*	*Number of observations conducted by IPCC*	*Number of pre-arranged observations*	*Number of surprise observations*
2008	3,319	548 (16.5%)	497	51
2009	8,998	1,808 (20%)	1,477	331
2010	6,887	1,888 (27.4%)	1,245	643
2011	4,893	2,010 (41%)	1,346	664

13.9 The above shows that the statutory framework provided for under the IPCC Ordinance has enhanced the transparency of the police complaints handling system with effective check and balances and reinforced the independent monitoring role of the IPCC.

Immigration Department

13.10 The situation remains essentially as explained in paragraphs 118 and 119 of the initial report.

Customs and Excise Department

13.11 The position remains essentially as explained in paragraph 120 of the initial report. There were 122 complaints of assault received in the reporting period of 2005-2011. All were found unsubstantiated after police investigations.

Independent Commission Against Corruption

13.12 In paragraph 119 of the previous report, we stated that the ICAC Complaints Committee was chaired by a member of the Executive Council. The current Chairman of the ICAC Complaints Committee assumed office in January 2010 and remained in position after his tenure with the Executive Council expired on 30 June 2012.

13.13 In paragraph 120 of the previous report, we reported that in 2003, 29 complaints concerning 70 allegations were lodged against the ICAC or its officers while in 2004, the corresponding figures were 21 complaints and 53 allegations respectively. For the two years' breakdown of the allegations by categories, we noticed that exact figures, instead of percentages, were quoted in the previous report. Please see below for an updated complaints statistics for the period from 2003 to 2011.

Year	No. of complaints received	Total no. of allegations received	Category of allegation (%)			
			Misconduct	Abuse of power	Neglect of duties	Inadequacy of ICAC procedures
2003[7]	29	70	49	36	14	1
2004[8]	21	53	32	36	32	0
2005	32	106	54	35	11	0
2006	15	44	27	43	27	3
2007	18	43	28	30	40	2
2008	22	48	42	12	46	0
2009	31	90	49	13	38	0
2010	34	76	55	5	38	2
2011	14	44	59	9	25	7

13.14 Also, we reported in paragraph 121 of the previous report that for 2003 and 2004, 10 and seven allegations against the ICAC were found to be substantiated or partially substantiated respectively. We noticed that for the period 1998 to 2002, the statistics compiled were based on the number of complaints instead of allegations. For clarity's sake, please refer to the following updates concerning the number of complaints found to be substantiated or partially substantiated between 2003 and 2011.

Year	No. of complaints considered	No. of complaints either substantiated or partially substantiated
2003	35	9
2004	22	5
2005	22	7
2006	24	5
2007	23	2
2008	22	2
2009	20	2
2010	25	4
2011	30	3

Avenues for complaint by mental patients

13.15 The position remains as explained in paragraph 123 of the previous report. The numbers of complaints received from mental patients by the HA in the past five years are set out in the table below.

[7] In 2003, the Committee received 34 allegations concerning ICAC officers' misconduct, 25 allegations on abuse of power, 10 on neglect of duties; and the remaining case was inadequacy of ICAC procedures.

[8] In 2004, the Committee received 17 allegations concerning ICAC officers' misconduct, 19 allegations on abuse of power; and 17 allegations on neglect of duties.

The total number of complaints received from mental patients by the HA

2007	*2008*	*2009*	*2010*	*2011**
150	147	151	154	249

* The definition of "complaints" was expanded in 2011, leading to the record of a higher number of complaints.

Article 14: Legal redress for victims of torture and an enforceable right to fair and adequate compensation

14.1 The position remains as explained in paragraphs 129 to 134 of the initial report. The numbers of applications made and approved under the Criminal and Law Enforcement Injuries Compensation Scheme since the previous report are as follows:

Year	*Number of applications made*	*Number of applications approved*
2006-07	442	292
2007-08	392	286
2008-09	409	248
2009-10	393	316
2010-11	332	228
2011-12	332	227

Article 15: Statements made as a result of torture shall not be invoked as evidence

15.1 The position is essentially as explained in paragraphs 135 to 136 of the initial report. The number of Police Video Interview Rooms has increased from 11 in 1996 to 74 as at 31 May 2012. Every major divisional police station has at least one such facility. As for the ICAC, the use of video-interviewing has long been its standard practice. The immigration investigation offices and major control points are now equipped with video-recording facilities. The same is also true for all Customs offices.

Article 16: Prevention of other acts of cruel, inhuman or degrading treatment or punishment

General

16.1 It is the position of the HKSAR Government that all persons acting in an official capacity must act in accordance with the law. Measures are in place to ensure that any acts of cruel, inhuman or degrading treatment or punishment committed by, at the instigation of, or with the consent or acquiescence of, any public official – or other person acting in an official capacity – will be subject to criminal or disciplinary sanctions.

Ill-treatment of children

16.2. In broad terms, the position remains as explained in paragraphs 143 to 147 of the initial report.

16.3. The provision of legal representation through the Duty Lawyer Service (DLS) for children and juveniles involved in care or protection proceedings who are detained in a

gazetted place of refuge has been operating well since its commencement in October 2003. Upon the review in 2005, the scope of such service has been expanded to cover any child or juvenile who is:

(a) Taken to the Juvenile Court directly by the Police for the purpose of applying for a Care or Protection Order, without being detained at a gazetted place of refuge before the court hearing; or

(b) Likely to be detained in a gazetted place of refuge on the recommendation of a social worker of the SWD.

16.4. Since March 2007, the service has been further extended to cover cases without parental or guardian consent for legal representation. We will continue to work closely with DLS with a view to maintaining the quality of the legal assistance provided to these children and juveniles.

16.5. Regulation 58 of the Education Regulations (Cap. 279, sub. leg. A) stipulates that "No teacher shall administer corporal punishment to a pupil". Pursuant to the provision in the Education Regulations, the Education Bureau (EDB) has also set out in the School Administration Guide that "Under all circumstances, school discipline should be administered in a manner consistent with students' human dignity, rights to education, individual differences and health conditions, including the physical, psychological and mental health conditions and in conformity with the present laws." All schools are required to observe the requirements of the Regulations. Moreover, a seminar is conducted every year on legal issues relating to student guidance and discipline, where school teachers are reminded, among other things, that corporal punishment is prohibited by law. EDB also regularly conducts seminars to raise teachers' awareness of child abuse and to enhance their competency in early identification of students and families in need of help. In the past five years (2007 to 2011), no teacher has been charged with the offence of corporal punishment.

Children in institutional care

16.6 Justices of the Peace and the SWD's officers visit homes run by NGOs on both a scheduled and surprise basis. To ensure impartiality and effectiveness of complaints handling, an Independent Complaints Handling Committee comprising eight independent members who are neither Government officials nor NGO staff was set up in 2009 to handle complaints that cannot be satisfactorily resolved at the NGO level.

Domestic violence

16.7 As pointed out in paragraph 134 of the previous report, we consider that domestic violence does not fall within the scope of Article 16, which – inter alia – requires that acts of cruel or inhuman treatment (and so forth) be "... committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." However, since the issue was raised in paragraph 13 of the previous concluding observations, we take this opportunity to state our position in the ensuing paragraphs.

16.8 In paragraph 13(a) of the previous concluding observations, the Committee recommended that HKSAR should thoroughly investigate all allegations of domestic violence which, if substantiated, should be appropriately prosecuted and punished.

16.9 Our criminal law punishes all acts of violence, irrespective of the relationships between the abusers and the victims, and independent of where the violent acts occur. The Police will handle all domestic violence reports professionally, and conduct thorough investigations according to the circumstances of each report. Where there is sufficient evidence of an offence, the Police will take firm and decisive actions to effect arrest and prosecution. The prosecuting authorities also accord priorities to domestic violence cases

and ensure that they are processed quickly at all stages. Various measures have also been implemented to facilitate fast-tracking of cases involving vulnerable witnesses.

16.10 In paragraph 13(d) of the previous concluding observations, the Committee recommended that HKSAR should provide further information on the progress of the Enhanced Central Domestic Violence Database (ECDVD).

16.11 Early identification of problem couples/lovers involved in domestic incidents (domestic disputes in which no offence is committed), followed by timely intervention, is an important element of the strategy to prevent domestic conflicts from escalating into actual violence.

16.12 To this end, in January 2009 a new Police procedure was introduced whereby all domestic violence and domestic incidents reports are indexed in the ECDVD, a risk assessment completed, and a decision made on whether to refer the subjects for appropriate assistance based on the circumstances of the report and any previous incidents. In addition to details of all domestic violence and domestic incidents reports, the ECDVD also contains details of persons involved in all reports of attempted suicide, insane person and missing person, as these incidents are often indicative of underlying domestic conflict issues. Furthermore, the ECDVD incorporates an automatic alert system whereby, if a person is involved in more than one of these incident types, an alert email is sent to the supervisory officers responsible for the previous incidents for special attention to such reports. The supervisory officers will assess the risk factors and decide if follow-up actions are required, including whether immediate intervention and assistance is required from the SWD.

Legal framework

16.13 With the enactment of the Domestic Violence (Amendment) Ordinance 2008, the protection afforded by the Domestic Violence Ordinance has been extended to former spouses and former cohabitants of the opposite sex as well as immediate and extended family members. The protection of minors who are under the age of 18 and victims of domestic violence has also been enhanced. The court is now empowered to require the abusers to attend an anti-violence programme seeking to change their abusive attitude and behaviour. Since January 2010, the name of the Ordinance has been changed to Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) (DCRVO) with the protection further extended to same sex cohabitants.

16.14 The criminal law deals with domestic violence mainly by the Offences Against the Person Ordinance (Cap. 212) which imposes criminal sanctions for, inter alia, murder, manslaughter, attempts to murder, wounding or inflicting grievous bodily harm, exposing a child under the age of two years whereby his life is endangered, ill-treatment or neglect of a child or young person by a person who has the charge of such child or young person, assault occasioning actual bodily harm and common assault. The Crimes Ordinance (Cap. 200) also criminalises acts of intimidation, arson, destroying or damaging property and sexual offences (including rape / marital rape, incest, indecent assault) etc.

16.15 In relation to the protection in civil law, the Protection of Children and Juveniles Ordinance (Cap. 213) empowers the court to grant a Care or Protection Order or appoint a legal guardian in respect of a child or juvenile who is in need of care or protection as defined under the Ordinance. The Mental Health Ordinance (Cap. 136) empowers the Guardianship Board established under the Ordinance to make an emergency guardianship order if it has reason to believe that a mentally incapacitated person is in danger, or is being or likely to be maltreated or exploited and it is necessary to make immediate provision to protect that person. The DCRVO provides civil remedies in the form of injunctions to protect primarily individuals in certain specified familial/cohabitation relationships and their children against molestation by the other person.

Services for victims of domestic violence and families in need

16.16 In additional to legal protection, the SWD offers a wide range of preventive, supportive and specialised services to help victims of domestic violence and families in need.

16.17 Over the past few years, the Government has devoted additional resources to enhance services in this regard, including:

- Strengthening social work manpower;
- Enhancing the 24-hour hotline service of the SWD;
- Increasing the capacity and support services of refuge centres for women;
- Setting up of a crisis intervention and support centre (the CEASE Centre) primarily for victims of sexual violence;
- Launching a family support programme to reach out to vulnerable families for early intervention;
- Sustaining efforts in publicity and public education to increase public awareness on the domestic violence problem and the legal remedies and services available;
- Enhancing the training of relevant frontline professionals, etc;
- Strengthening clinical psychological support for victims of domestic violence, particularly children witnessing domestic violence;
- Launching an Anti-violence Programme and implementing the Batterer Intervention Programme to change the batterers' attitude and behaviour; and
- Strengthening the support for victims of domestic violence through the Victim Support Programme for Victims of Family Violence.

16.18 There are currently 11 Family and Child Protective Services Units under the SWD. They are specialised units manned by experienced social workers that handle spouse/cohabitant battering and child abuse cases and provide statutory protection for children. They provide a co-ordinated package of one-stop service and arrangement of various services for victims, their families and batterers in domestic violence cases, and help them tide over the difficult period, lessen trauma associated with violence and live a new life.

16.19 There are also 62 Integrated Family Service Centres (IFSCs) set up across the territory that provide a wide range of preventive, supportive and therapeutic welfare services to families in need. A major focus of the IFSCs is on early intervention. Social workers of the IFSCs will proactively reach out to the needy families to support them in developing mutual help networks in the community and enhancing their resilience.

16.20 There are five refuge centres for women with 260 places in Hong Kong, providing short-term accommodation service for victims of domestic violence. Additional resources have been allocated in the past few years to enhance the capacity and support services of the refuge centres.

16.21 There is a Multi-purpose Crisis Intervention and Support Centre (CEASE Centre) to provide crisis intervention and support services including 80 places of short term accommodation service to victims of sexual violence and individuals/families facing domestic violence or in crisis.

16.22 The SWD and the Housing Department together implemented enhanced measures (through housing assistance and compassionate rehousing (including conditional tenancy))

to assist victims of domestic violence with genuine and long-term housing needs which cannot be resolved by their own means.

16.23 In handling domestic violence cases, the primary focus is to respond immediately to stop the violence, ensure safety of the victims and their families and provide support, in particular to the victims. If the victims and children are considered to be of high-risk of further violence, the SWD will take immediate action (subject to the victims' consent as appropriate) to arrange for shelter, temporary accommodation or residential service for the victims and their children. In case of need, social workers would also assist the victims to seek legal protection through application for an injunction under the DCRVO or initiating the application for a Care or Protection Order under the Protection of Children and Juveniles Ordinance to protect the children.

16.24 To strengthen support for victims of domestic violence, including those involved in the legal proceedings, the SWD has launched the Victim Support Programme for Victims of Family Violence (VSP) since June 2010. The VSP provides emotional support and information on community support services (e.g. legal aid services, accommodation, medical and childcare services, etc.) and the relevant legal proceedings to the victims concerned. If necessary, the victims concerned will be accompanied by social workers or volunteers to attend court hearings and go through the legal proceedings.

Prevention and early intervention

16.25 To facilitate intervention at an earlier stage, the Government has taken various preventive measures to identify the vulnerable families and provide assistance as early as possible before their problems escalate into more serious incidents. For instance:

(a) The SWD has since early 2007 launched a Family Support Programme (FSP) to increase contacts with needy families who are reluctant to seek help. Under the FSP, through telephone contacts, home visits and other outreaching programmes, families at risk, including those at risk of domestic violence, psychiatric problems and social isolation, are connected to various support services available and are motivated to receive services to prevent further deterioration of their problems. Volunteers including those who have overcome family/personal problems or crises are recruited and trained to contact these families and to provide them with support and assistance.

(b) A Comprehensive Child Development Service (CCDS) has been launched in phases since July 2005. Built on the existing services provided in Maternal and Child Health Centres, public hospitals, IFSCs/Integrated Services Centres and pre-primary institutions, CCDS seeks to identify at-risk pregnant women, mothers with probable Postnatal Depression, children and families with psychosocial needs, and pre-primary children with physical, developmental and behavioural problems at an early stage. Children and families in need would be referred to appropriate intervention services, such as cross-disciplinary care arrangement, psychiatric, emotional and social service support. CCDS will be extended to cover all districts by end of 2012-13 to enhance support for children and families in need.

16.26 The SWD also set up in June 2011 a standing Child Fatality Review Mechanism following the successful experience of a three-year pilot scheme to review child death cases to work out strategies for prevention of avoidable child death.

16.27 The SWD will continue to provide training at both central and district levels to social workers and other professionals in dealing with domestic violence and to enhance their skills in risk assessment, crisis intervention and post-trauma counselling. In 2012-13, SWD will provide about 7,000 places for social workers and other professionals.

Publicity and public education

16.28 The SWD has launched a territory-wide and district-based publicity campaign on "Strengthening Families and Combating Violence" to enhance public awareness of the serious impact of domestic violence, encourage families in need to seek help, and promote the concept of neighbourhood watch.

16.29 The SWD has also developed a website of Support for Victims of Child Abuse, Spouse/Cohabitant Battering and Sexual Violence to help victims understand their rights, protection provided by the law and support services available in the community.

16.30 Following the commencement of the DCRVO, publicity efforts have also been strengthened to increase public awareness of the much-expanded protection of the new legislation and the wide meaning of "molestation" from which victims of domestic violence are protected under the Ordinance.

16.31 The Family Life Education Resource Centre of the SWD has also produced resource kits for family education to support relevant departments and organisations to provide family education services in order to promote family functioning and strengthen family relationships including positive parenting.

Statistics

Spouse/cohabitant battering

16.32 The number of new spouse/cohabitant battering cases reported to the SWD in 2009, 2010 and 2011 were 4,807, 3,163 and 3,174 respectively.

Child Abuse

16.33 According to the statistics of the SWD's Child Protection Registry, the number of newly reported child abuse cases in 2009, 2010 and 2011 were 993, 1,001 and 877 respectively.

Human trafficking

16.34 In paragraph 7 of the previous concluding observations, the Committee recommended that the HKSAR should increase protection to trafficked persons. We always provide necessary support and assistance to victims of trafficking, depending on the merits of individual cases. These services include urgent intervention, as well as medical, counselling and other support services. It must however be stressed that the HKSAR is neither a destination nor a transit point for human trafficking. Neither is it a place of origin for exporting illegal migrants. Over the years, cases of human trafficking are rarely discovered in Hong Kong; the number of reported cases each year ranged between one to four from 2008 to 2011. There has been no reported case that involves children.